

State of Delaware  
Historical and Cultural Affairs

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June 15, 2017

Federal Communications Commission  
FCC Headquarters  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

RE: FCC's Notice of Proposed Rulemaking on Accelerated Wireless Broadband Deployment by  
Removing Barriers to Infrastructure Investment.  
WT Docket No. 17-79

To Whom It May Concern:

The State of Delaware's Historic Preservation Office (DESHPO) has reviewed the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking and Notice of Inquiry regarding WT Docket Number 17-79: *Accelerating Wireless Broadband Development by Removing Barriers to Infrastructure Investment*. The DESHPO recognizes that telecommunications technology continues to evolve and serve ever-growing demands, but in general, we believe that the existing Nationwide Programmatic Agreements (NPA) and related guidance from the FCC and the Advisory Council on Historic Preservation (ACHP) effectively balance the needs of the industry without sacrificing our historical and cultural resources. In our opinion, overall, the FCC's proposed new rule will result both in unnecessary risks to our historic properties and cultural resources.

We are providing the following comments on specific sections of the proposed rule attached with this letter. If you have any questions regarding this correspondence, please contact me via e-mail at [gwen.davis@state.de.us](mailto:gwen.davis@state.de.us) or Kara Briggs at [kara.briggs@state.de.us](mailto:kara.briggs@state.de.us). We may each be contacted by telephone at 302-736-7400.

Sincerely,



Gwenyth A. Davis  
Deputy State Historic Preservation Officer  
Delaware Division of Historical & Cultural Affairs



- Item 14—*Lapse of State and Local Governments' Authority*  
The FCC should propose a procedure (outline), reviewed by the ACHP and released for comment prior to implementing any action where the FCC may revoke a state or local government's authority to review projects in which the locality has failed to meet its review obligations. In such cases the FCC should provide evidence of a pattern wherein review obligations are repeatedly not met by the locality. The locality must be allowed to answer and defend against accusations made. If the locality is found to be at fault and their authority is revoked, a procedure must be put in place so as to allow the locality to regain its authority to resume the review of projects.

#### **Section II.A.2 Reasonable Period of Time to Act on Applications**

- Item 18  
DESHPO opposes the application of separate time limits for review of facility deployments not covered by the Spectrum Act, as it would lead to confusion within the process for all parties involved (Applicants/Carrier, Consultants, SHPO).
- Item 20  
As per 36 CFR Part 800, DESHPO believes that the "shot clock" for review should not begin until the SHPO receives an "adequately documented finding," including information on the proposed undertaking, the efforts to identify historic properties and results thereof, and the assessment of potential effects to any historic properties.

#### **Section II.B.2.a Need for Action**

- Item 34  
Consultation with local governments, the SHPO, THPOs, the public, and other identified stakeholders is a necessary and fundamental component of the Section 106 review process. Compliance with Section 106, and its implementing regulations at 36 CFR Part 800, is an obligation of the responsible Federal agency, though the FCC, through extensive consultation leading to the NPAs, has in turn, delegated much of this authority to their applicants. DESHPO believes that this already represents a massive streamlining, allowing the industry to initiate consultation, prioritize projects, and manage their overall workload in ways that would not be possible if the FCC administered each step of the review process.
- Item 35-38  
While DESHPO cannot and does not speak for any Tribal Nations, we would like to state that sacred burial grounds are not the only types of properties that may hold historic, religious, or cultural significance, and potential effects to other significant sites should not be dismissed. Tribal Nations should have the authority to determine their own tribal fees and that they "need to preserve secrecy of particular sacred sites to avoid unwanted intrusions." Furthermore, we disagree with the PTA-FLA argument to amending the NPA and Collocation Agreement "to exempt from review sites that will obviously have no effects" on a Tribal Nation's sacred burial grounds as only the Tribal Nation in question may accurately and definitively determine any effects on their cultural resources.

Item 39

There are currently no fees associated with DESHPO's review of federal undertakings subject to Section 106. There is no project review application fee, no fee for registering with or using our online Cultural and Historical Resources Information System (CHRIS), and no fee for viewing or downloading information from CHRIS.

DESHPO does not believe that review by the SHPO and review by the local government are duplicative, even if conducted by a Certified Local Government (CLG) issuing a Certificate of Appropriateness. CLG's may not have staff or local commissioners that meet the Secretary of the Interior's Professional Qualifications Standards in all fields required for such reviews. Furthermore, local historic preservation ordinances may not account for all types of resources defined in 36 CFR Part 800 as historic properties. Local historic preservation ordinances often only cover historic properties that are specifically designated as a local landmark or within a locally designated historic district, and may not consider or be aware of archeological sites, or they may not consider effects to building interiors (for small cell/DAS installations). Local ordinances may not consider or even have jurisdiction over indirect or cumulative effects to historic properties (as is required by 36 CFR Part 800).

**II.B.2.b.ii Other NHPA Process Issues**

- Item 60 – *Lack of Response*  
DESHPO is committed to providing comments on all federal undertakings within 30 days of receipt. The best solution to insure a timely review by DESHPO is for the applicant to transmit a full and complete submittal, and any additional information that the SHPO may reasonably request. Unnecessary delays in reviews occur when an application lacks sufficient information (required attachments such as but not limited to mapping, project location, historic property identification, construction drawings, etc.) or the applicant does not respond to DESHPO comments.

As previously stated, DESHPO opposes the application of separate time limits to different categories of construction, as in new towers, collocations, DAS and small cell projects as it would lead to confusion within the process for all parties involved (Applicants/Carrier, Consultants, SHPO).

- Items 62 - *Batching*  
DESHPO is interested in further exploring the idea of batching if mechanisms are in place that restrict the total number sent at one time and criteria exist for how the projects are batched. Suggested batching criteria, such as in DAS/small cell project reviews, based on the project type, consistency of equipment and installation, expected impacts, and geographic proximity should be included. DESHPO recommends a geographic area of an appropriate footprint; no larger than a half-mile. In all cases, each batch should contain all the required information, include a cover document with an overall map showing and labeling all proposed locations, site maps for each location, adequate installation and construction information, and detailed addresses or latitude and longitude.

### **II.B.2.b.iii NEPA Process**

- Item 65  
DESHPO could support a targeted categorical exclusion for DAS sites located on/in buildings that are less than 45 years of age that are not listed in, nor previously determined eligible for listing in, the National Register, and where the antennae are installed to not be visible from a National Register-listed or -eligible property.

### **II.B.2.c.i Pole Replacements**

- Item 68  
DESHPO could support broader exemptions for replacement of existing telecommunications towers if first the definition of “substantially larger,” as noted within the provision, that “the replacement pole is not substantially larger” be negotiated and agreed upon. However, DESHPO does not support including poles that were not originally constructed for the purpose of carrying communications antennae. For example, light and/or utility poles located within historic districts may themselves be considering contributing features of a district; removal and replacement of these poles may potentially lead to a finding of adverse effect.

### **II.B.2.c.ii Rights-of-Way**

- Items 69–71  
DESHPO strongly opposes expansion of the NPA exemption from Section 106 review for construction of wireless facilities in Rights of Way (ROW) and cannot support a blanket exclusion of tower construction, wireless facilities or DAS installation in transportation rights-of-way. Understanding that transportation corridors are among the areas where customer demand for wireless service is highest and arguably where the greatest need may exist, DESHPO maintains that the existing NPAs should remain in place.  
It should not be assumed that all areas of a ROW are previously disturbed and/or contain no historic properties. As noted by our DelDOT colleagues in a separate comment submittal, “portions of the Delaware’s ROW, and State-owned lands outside ROW, are subject to deed restrictions and environmental covenants, which were put in place to protect natural and cultural resources found on those properties. Those protections run with the land in perpetuity and were identified as important elements of the State’s heritage by DESHPO and waters of the United States by the US Army Corps of Engineers. Some sites preserve rare, threatened and endangered species. These discoveries and protections came as a result of the processes followed under NHPA and NEPA, as well as the Endangered Species Act.”

The FCC should not be allowed to abrogate these commitments, which were negotiated in good faith by the agencies and were codified in legally binding agreements. DESHPO supports our DelDOT colleagues in urging the FCC “to continue the protection of these resources by prohibiting wireless providers from excavating or constructing new infrastructure within the boundaries of these protected sites.

Furthermore, a number of transportation corridors may be National Register (NR) listed or eligible resources in and of themselves. Additionally, it is not uncommon for transportation corridors to exist alongside individual historic resources or to travel through historic districts or over corridor features such as NR listed bridges. The NPA exemption from Section 106 review should not be expanded to include ROW.

#### **II.B.2.c.iii Collocations**

- Item 73  
DESHPO opposes excluding collocations located between 50 and 250 feet of a historic district from review. Section 106 regulations and the FCC Programmatic Agreement currently provide for the review of collocations if they are within 250 feet of historic districts. Reducing this distance to 50 feet would potentially allow for highly visible collocations adjacent to historic properties or within historic districts, and fails to consider cumulative effects.
- Item 74  
DESHPO opposes excluding Tribal Nations and NHOs in any way from participation in the Section 106 review process.
- Item 75  
As per our comment to Item 39, DESHPO does not support excluding projects from SHPO review that are also reviewed by a local government, even if conducted by a CLG issuing a Certificate of Appropriateness.

#### **II.B.3 Collocations on Twilight Towers**

- Item 78-86  
DESHPO agrees that the issue of Twilight Towers and non-compliant towers should be resolved. As noted in conference calls on this topic, it is unknown how many Non-Compliant, "Twilight," Towers were constructed outside of the Section 106 process between 2001 and 2005. FCC should require tower owners be provided a mandatory deadline in which non-compliant towers be identified and submitted for review by SHPOs/THPOs. Any determined adverse effect found on historic properties or Tribal religious and cultural sites should be addressed through typical consultation. Mitigation could include tower removal at the owner's expense in cases where Non-Compliant towers are found to have egregious adverse effects on cultural and historic resources.

Collocations to towers built between March 16, 2001 and March 7, 2005 should not be excluded from Section 106 historic preservation review. Additional collocations to non-compliant towers should not be permissible simply because they exist despite their violation of the NHPA. Allowing such an action implies failure to comply is acceptable. In cases where Non-Compliant Towers were constructed where a determination of Adverse Effect is found to be evident, the collocation of any additional antenna may increase any adverse effect on historic resources.